

23 April 2020

ODEI “Lowdown” – The True Facts or Relevant Information



SUBJECT: Harassment

APPLICABILITY: Applicants for, or employees in, Title V and Title 32 technician status

Harassment

Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).

Harassment is *unwelcome* conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where

- 1) Enduring the offensive conduct becomes a condition of continued employment, ***or***
- 2) The conduct is severe ***or*** pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Harassment can occur in a variety of circumstances, including, but not limited to, the following:

- The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
- The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
- Unlawful harassment may occur without economic injury to, or discharge of, the victim.

Employer Liability for Harassment

The employer is automatically liable for harassment by a supervisor that results in a negative employment action such as termination, failure to promote or hire, and loss of wages. If the supervisor's harassment results in a hostile work environment, the employer can avoid liability only if it can prove that:

- 1) It reasonably tried to prevent and promptly correct the harassing behavior; **and**
- 2) The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

The employer will be liable for harassment by non-supervisory employees or non-employees over whom it has control (e.g., independent contractors or customers on the premises), if it knew, or should have known about the harassment and failed to take prompt and appropriate corrective action.

When investigating allegations of harassment, the EEOC looks at the entire record: including the nature of the conduct, and the context in which the alleged incidents occurred. A determination of whether harassment is severe or pervasive enough to be illegal is made on a case-by-case basis.

SCNG ODEI Contact Information

If You Are A Federal Employee or Job Applicant and Believe You Have Been Subjected to Unlawful Discrimination, Harassment or Retaliation on the basis of **race, color, religion, national origin, genetic information, sex, (including pregnancy, gender identity, sexual orientation), age (40 and over), or disability, contact the Office of Diversity, Equity, and Inclusion.**

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